

Revised
Water Code
of the
State of Arizona

CHAPTER 81
Article I — Laws of 1929



Compiled by
State Water Commissioner

PHOENIX, ARIZONA
JULY, 1929

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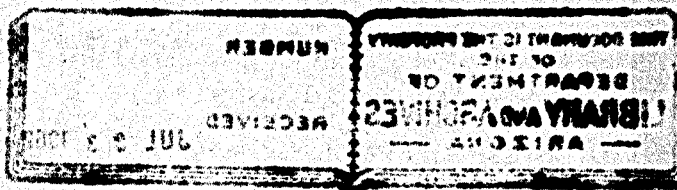
CHAPTER 81
Article I—Laws of 1929



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NUMBER

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Article 1. State water code.

§ 3280. **Waters of state public, and subject to beneficial use.** The water of all sources, flowing in streams, canyons, ravines or other natural channels, or in definite underground channels, whether perennial or intermittent, flood, waste or surplus water, and of lakes, ponds and springs on the surface, belongs to the public, and is subject to appropriation and beneficial use, as herein provided. Beneficial use shall be the basis, measure and limit to the use of water. Whenever the owner of a right to the use of water shall cease or fail to use the water appropriated for five successive years, the right to the use shall cease, and the water shall revert to the public and be again subject to appropriation. (§ 1, Ch. 164, L. '19, am., 1, Ch. 64, L. '21, rev.)

§ 3281. **Right of appropriation.** Any person may appropriate any unappropriated water for domestic, municipal, irrigation, stock watering, water power, or mining uses, for his personal use or for delivery to consumers; the person first appropriating shall have the better right. Such person, to effect the beneficial use, may construct and maintain reservoirs, dams, canals, ditches, flumes, and other necessary waterways. (§ 4169, R. S. '01; 5337, R. S. '13, rev.)

§ 3282. **Water commissioner; appointment; powers and salary.** The governor shall appoint a state water commissioner, who shall be familiar with water law, hydraulics and irrigation. The commissioner shall hold office for a period of six years, be removable by the governor for cause, maintain his office at the capitol and receive a salary of four thousand dollars per annum and his necessary traveling expenses; he shall have general control and supervision of the waters of the state, and of the appropriation and of the distribution thereof, excepting the distribution reserved to water commissioners appointed by the courts under existing decrees. (§ 2, Ch. 164, L. '19, rev.)

§ 3283. **Survey of water resources; record; rules and regulations.** The commissioner may make surveys, investigations and compilations of the water resources in the state, and their potential development, and may co-operate for

such purposes with the United States; he shall maintain a permanent public depository for existing and future records of stream flow, and other data relating to the water resources of the state; he may formulate and prescribe rules and regulations governing the appropriation and distribution of water. The commissioner shall have an official seal bearing the words, "Arizona State Water Commissioner" which shall be affixed to certificates, maps, plans and like instruments issued from his office. (§ § 3-4, Ch. 164, L. '19, cons. & rev.)

§ 3284. **Application to appropriate.** Any person, including a municipality, the state, or the United States, intending to acquire the right to the beneficial use of water, shall make an application to the commissioner for a permit to make an appropriation of water. The application shall state the name and address of the applicant; the water supply from which the appropriation is applied for; the nature and amount of the proposed use; the location, point of diversion and description of the proposed works by which it is to be put to beneficial use; the time within which it is proposed to begin construction and the time required for the completion of the construction and the application of the water to the proposed use. If the application is for agricultural purposes it shall give the legal subdivisions of the land and the acreage to be irrigated; if for power purposes, the nature of the works by which power is to be developed, the pressure head and amount of water to be utilized, the points of diversion and release of the water, and the uses to which the power is to be applied; if for the construction of a reservoir, the dimensions and description of dam, the capacity of the reservoir for each foot in depth, the description of the land to be submerged, and the uses to be made of the impounded waters; if for municipal uses, the present population to be served, and an estimate of the future requirements; if for mining purposes, the location and the nature of the mines to be served, and the methods of supplying and utilizing the waters. The application shall be accompanied by such maps, drawings and data as prescribed by the commissioner. (§ § 5-6, Ch. 164, L. '19, am., 2-3, Ch. 64, L. '21, cons. & rev.)

§ 3285. Approval or rejection of application; legislative authorization; relative value of uses. Upon receipt of the application, the commissioner shall indorse thereon the date of its receipt and keep a record thereof. If the application is defective, he shall return the same for correction or completion, indorse thereon the date of and reasons for the return, and keep a record thereof. The application shall not lose its priority of filing on account of such defects if corrected, completed and re-filed in the office of the commissioner within sixty days from its return to the applicant, or within such further time as the commissioner may, by an order of record, allow. Applications shall be recorded in a book kept for that purpose. The commissioner shall approve all applications, made in proper form, contemplating the application of water to a beneficial use; but, when the application or the proposed use conflicts with vested rights, is a menace to the safety, or against the interests and welfare of the public, he shall reject the application. An application for the appropriation of the waters of a stream within the state for the generation of electric energy in excess of twenty-five thousand horsepower, or an application for a permit to build a dam for the generation of hydro-electric energy on a stream within the state in excess of twenty-five thousand horsepower, shall not be approved or granted unless authorized by an act of the legislature. A change in the use of water appropriated for domestic, municipal or irrigation uses, shall not be made without the approval of the commissioner; if the change contemplates the generation of hydro-electric energy or power of over twenty-five thousand horsepower, such approval shall not be granted unless authorized by an act of the legislature.

Before approving or rejecting the application, the commissioner may require additional information to enable him to properly guard the public interest, and may, on applications proposing to divert more than ten cubic feet of water per second, require a statement of the following facts: If a corporation, a copy of the articles of incorporation, the names and residences of directors and officers, and the amount of its authorized and paid up capital;

if not a corporation, the name of the party proposing to construct the works, and a showing of his financial ability to carry out the proposed work. He may also require the applicant to show that the proposed diversion will not conflict with vested rights.

An application may be approved for less water than applied for, if substantial reasons exist therefor, and shall not be approved for more than can be applied to a beneficial use. Applications for municipal uses may be approved to the exclusion of all subsequent appropriations, if the estimated needs of the municipality so demand, upon consideration and order by the commissioner. As between two or more pending conflicting applications for the use of water from a given water supply, where the capacity of the supply is not sufficient for all applications, preference shall be given by the commissioner according to the relative values to the public of the proposed use. The relative values to the public for this purpose are: 1. Domestic and municipal uses, domestic uses to be construed to include gardens not exceeding one-half acre to each family; 2. irrigation and stock watering; 3. water power and mining uses. (§ 7, Ch. 164, L. '19, am., 4, Ch. 64, L. '21; 1, Ch. 109, L. '27, rev.)

§ 3286. Effect of approval or rejection. The approval or rejection of the application shall be indorsed thereon, a record thereof kept by the commissioner, and the application returned immediately to the applicant. If approved, the applicant may construct the necessary works, take steps to apply the water to a beneficial use and perfect the appropriation. If the application is rejected, the applicant shall take no steps toward the construction of the proposed work or the diversion of the water. (§ 8, Ch. 164, L. '19, rev.)

§ 3287. Permit may be assigned; rights of assignee; disclaimer of franchise; value of permit. A permit to appropriate water may be assigned, subject to the conditions of the permit, but shall not be binding, except upon the parties thereto, unless the assignment is approved by and filed with the commissioner. The permittee, if he accepts such permit, shall accept the same upon the condition that no

value, in excess of the amount paid to the state, shall be claimed for such permit, or for the rights acquired thereby, when any public authority is regulating, or fixing the rate or charges of the services to be rendered by the permittee, his successors or assigns, or when the state, a city, county, municipal water or irrigation district, or any political subdivision of the state is seeking to acquire the rights and property of the permittee, his successors or assigns. (§ 9, Ch. 164, L. '19, rev.)

§ 3288. **Time of construction.** Actual construction, except under applications by a city or town for its municipal uses, shall begin within one year from the approval of the application, be prosecuted with reasonable diligence and completed within a reasonable time, to be fixed in the permit, not to exceed five years from the date of such approval. The commissioner shall, for good cause shown, extend the time beyond the five years if the magnitude, physical difficulties and cost of the work merit such extension. (§ 10, Ch. 164, L. '19, rev.)

§ 3289. **Applications for reservoir permits; secondary permits for water.** Applications for reservoir permits shall be governed by the foregoing sections, except that the lands proposed to be irrigated therefrom need not be enumerated in the primary permit. The party proposing to apply to a beneficial use the water stored in such reservoir shall file an application for a permit, to be known as the secondary permit, which application shall refer to such reservoir as the supply of water, and shall show that a written agreement has been entered into with the owners of the reservoir for a permanent interest in said reservoir sufficient for the purposes set forth in the application. When the beneficial use has been perfected under the secondary permit, the final certificate of appropriation shall issue and refer to both the ditch described in the secondary permit and the reservoir described in the primary permit. If at any time it shall appear to the commissioner, after a hearing, that the holder of the primary permit will not, or cannot, within a reasonable period develop the supply of water or complete the works, the commissioner may, upon application of the holder of the secondary permit, permit to such

holder joint occupancy and use under the primary permit with the holder thereof, to the extent deemed advisable by the commissioner; provided that the applicant shall pay to the holder of the primary permit a pro rata portion of the total cost of the works, such pro rata cost to be based on the proportion of water used by the original and the additional users of such works. (§ 12, Ch. 164, L. '19, rev.)

§ 3290. Certificates; date of rights. Upon it being made to appear to the satisfaction of the commissioner that an appropriation has been perfected and a beneficial use completed in accordance with the provisions of this article, he shall issue to the applicant a certificate, like in form and substance to, and recorded and transmitted to the applicant in the same manner as, the certificate required to be issued upon the final determination of the rights to the waters of a stream. Certificates for rights to the use of water for power development shall limit the right or franchise to a period of forty years from the date of application, subject to a preference right of renewal under the laws existing at the date of expiration of such franchise or right. The right acquired by such appropriation shall date from the filing of the application in the office of the commissioner. (§ § 13-14, Ch. 164, L. '19, cons. & rev.)

§ 3291. Reciprocity between states. An application for the appropriation of water shall not be denied because the point of diversion of water described in the application, or any portion of the works to be constructed for the purpose of storing, diverting or distributing such water, or the place of intended use, or the lands to be irrigated by such water, or part thereof, may be situate in some other state; but where either the point of diversion, or any of such works, or the place of intended use, or the lands, or part of the lands, to be irrigated by means of such water, are situated within the state, the permit shall issue. The commissioner may, however, in his discretion, decline to issue a permit where the point of diversion is within the state, but the place of beneficial use is in some other state. (§ 15, Ch. 164, L. '19, rev.)

§ 3292. Appeal from commissioner's decisions. An applicant, or any person whose

TO THE SECRETARY OF THE
 CIVIL SERVICE COMMISSION
 ALBANY, N. Y.

rights are affected by the decision of the commissioner, may appeal to the superior court of the county in which the water proposed to be diverted is situate, which court may modify the decisions of the commissioner if he has abused his authority. The appellant, within sixty days from the decision by the commissioner, shall file with the clerk of the court a copy of the order appealed from, together with a petition stating the grounds of the appeal. A copy of the petition shall be served upon the commissioner, who shall answer the same within thirty days from the service, and with the answer transmit to the court the records and files of his office in the matter on appeal. The appellant may have summons issued for any other party in interest. The appeal shall be determined upon the records and files of the commissioner and upon such further evidence as may be adduced by the parties. (§ 11, Ch. 164, L. '19, am., 2, Ch. 109, L. '27, rev.)

§ 3293. Determination of conflicting rights. The commissioner may, and upon a petition signed by one or more water users upon any stream or water supply requesting the determination of the relative rights of the various claimants to the waters of that stream or supply shall, if the facts and conditions justify, determine the rights of the various claimants; and shall fix a time for the taking of testimony and make such examinations as will enable him to determine such rights. If an action has been brought in a state court for the determination of such rights, the court may transfer such action to the commissioner for determination as herein provided, but no proceedings shall be had in such action by the commissioner until such transfer is made. Where rights to the use of water, or dates of appropriation have been determined in a judgment of a court, the commissioner shall accept such rights and dates of appropriation as found in such judgment; and the owner of an appropriation adjudicated in such judgment need not appear in, or take notice of the proceedings, investigations or hearings of the commissioner except to disprove abandonment or other loss of the right adjudicated by such judgment. (§ 16, Ch. 164, L. '19, rev.)

§ 3294. Publication of notice of investigation. The commissioner shall prepare a notice of the place and date when he will begin the investigation of the flow of the stream or supply, the ditches diverting water therefrom, and the land irrigated thereby, and requiring all claimants to rights in the waters thereof to make proof of their claims when called upon by the commissioner. The notice shall be published in two issues of one or more newspapers having general circulation in the counties in which such supply is situated. (§ 17, Ch. 164, L. '19, am., 5, Ch. 64, L. '21, rev.)

§ 3295. Examination of stream and lands irrigated. The commissioner shall examine: The stream or supply; the works diverting water therefrom; the discharge of said stream as shown by existing data and additional measurements; the carrying capacity to the various ditches and canals; the lands irrigated or susceptible of irrigation from the various ditches and canals, and make measurement thereof; and take such other steps and gather such other information as may be essential to the proper understanding of the relative rights of the parties. The investigations shall be reduced to writing, and kept of record in his office conveniently accessible to the public. He shall make or cause to be made a map or plat on a scale of not less than one inch to the mile, showing with substantial accuracy the course of said stream or supply, the location of such ditch or canal diverting water therefrom, and the legal subdivisions of lands which have been irrigated or are susceptible of irrigation from the ditches and canals already constructed. (§ 18, Ch. 164, L. '19, am., 6, Ch. 64, L. '21, rev.)

§ 3296. Notice to claimants. During the investigation the commissioner shall send by registered mail to each claimant to the use of any waters of said stream or supply, so far as such claimants can reasonably be ascertained, a notice stating the date and place when and where the commissioner will take testimony of the rights to the waters of said stream or supply. Such notice must be mailed at least thirty days prior to the date set therein for the taking of testimony, and shall be published in two

issues of one or more newspapers having general circulation in the counties in which such stream or supply is situated. The taking of testimony may be adjourned from time to time and from place to place to suit the convenience of those interested. (§ 19, Ch. 164, L. '19, am., 7, Ch. 64, L. '21, rev.)

§ 3297. Statement of claimant. The commissioner shall enclose with said notice a blank form on which the claimant shall present in writing the particulars of his claim of right to the waters. The statement shall include: The name and address of the claimant; the nature of the right or use on which the claim is based; the time of initiation of such right and the commencement of such use; if distributing works are used or required, the date of beginning and completion of construction or of enlargements, the dimensions of the ditch as originally constructed and as enlarged; the date when water was first used for beneficial purposes; if used for irrigation, the amount of land reclaimed the first year and in subsequent years, and the amount and general location of the land, the character of the soil, and the kind of crops cultivated; and such other facts as will show a compliance with the law in acquiring the right. The statement shall be verified by the claimant. The commissioner or his deputy, if the oath be taken before him, shall administer such oath without charge. (§ § 20-1, Ch. 164, L. '19, am., 8-9, Ch. 64, L. '21, cons. & rev.)

§ 3298. Opening and inspection of evidence. Upon the completion of the taking of testimony the commissioner shall give notice by registered mail to the claimants that at a time and place named in the notice, not less than ten days thereafter, said evidence will be open to inspection by the claimants. The commissioner shall keep the evidence open to inspection at such place not less than thirty days, or such further time as fixed in the notice. (§ 23, Ch. 164, L. '19, am., 11, Ch. 64, L. '21, rev.)

§ 3299. Contest; notice of; hearing. Should any claimant desire to contest the rights asserted in the evidence submitted by another claimant, he shall, within five days after the expiration of the period fixed in the notice for

public inspection of the evidence, notify the commissioner in writing under oath, stating with reasonable certainty the grounds of his proposed contest. The commissioner shall notify, by registered mail or by personal service, the said contestant and the claimant whose rights are contested, to appear before him at such time and place as he shall designate in said notice, not less than thirty days nor more than sixty days from the date the notice is served. The commissioner may adjourn the hearing from time to time upon reasonable notice to the parties, may issue subpoenas and compel the attendance of witnesses, take evidence, order the taking of depositions and issue commissions therefor. Said witnesses shall receive fees as in civil actions, the costs to be taxed in the same manner as are the costs in suits in equity. The evidence in such hearing shall be limited to the subjects enumerated in the notice and statement of contest. (§ § 24-5, Ch. 164, L. '19, am., 12-13, Ch. 64, L. '21, cons. & rev.)

§ 3300. Order of determination; court hearing; notice to claimants. After the completion of the taking of testimony or the hearing of a contest, the commissioner shall file the evidence in his office and make, and enter of record in his office, findings of fact and an order determining and establishing the several rights to the waters of said stream or supply. The original evidence and certified copies of the measurements and maps and of the order of determination and findings of the commissioner, as they appear of record in his office, shall be thereupon filed by the commissioner with the clerk of the superior court in the county in which reside the greatest number of water users whose rights are determined by such order of determination. Upon the filing of such evidence and order, the court shall by an order fix a time of hearing in said court, which shall be at least forty days subsequent to the date of such order. The clerk of said court shall forthwith deliver a certified copy of such order to the commissioner, who shall immediately upon receipt thereof notify each claimant who has appeared in the proceeding, of the time and place for such hear-

ing. Service of such notice shall be deemed complete upon depositing such notice in the post office as registered mail, addressed to such claimant at his address as set forth in his statement of claim. Proof of such service shall be made and filed with the court by the commissioner as soon as possible after the mailing of such notices. (§ 26, Ch. 164, L. '19, rev.)

§ 3301. Filing exception to order; hearing and decree. The proceedings in court shall thereafter be as near as may be like a suit in equity. At any time prior to the hearing, any party interested may file exceptions in writing to such findings and order of determination, or any part thereof, which exceptions shall state with reasonable certainty the grounds of the exceptions and shall specify the part of such findings and order to which exceptions are made. A copy of such exceptions shall be served upon any adverse party affected thereby; such service may be made upon such adverse party in person, upon his attorney if he has appeared by attorney, upon his agent, or if a non-resident of the state, by registered mail addressed to his place of residence as set forth in the proceedings. If no exceptions are filed, the court shall on the day set for the hearing enter a decree affirming the determination of the commissioner; if exceptions are filed the court shall fix a time, not less than thirty days thereafter, at which time a hearing will be had upon such exceptions. All parties may be heard upon the consideration of the exceptions, and the commissioner may appear on behalf of the state. The court may remand the action to the commissioner for further testimony and a further order of determination, or affirm or modify the order of the commissioner, and assess the costs as it deem just. The clerk of the court, immediately upon the entry of the judgment of determination shall transmit a certified copy of such judgment to the commissioner, who shall immediately enter the same of record in his office and file a certified copy of such judgment with the county recorder of each county wherein such stream or supply, or any portion or a tributary thereof, is situated. (§ 27, Ch. 164, L. '19, am., 14, Ch. 64, L. '21, rev.)

§ 3302. Division of water pending hearing, determination conclusive. The determination of the commissioner shall be in full force and effect from the date of its entry in his records; and during its pendency in the court, and until a certified copy of the judgment of the court is transmitted to the commissioner, the division of water from the stream or supply involved in such appeal shall be made in accordance with the order of the commissioner. The determination of the commissioner, as confirmed or modified by the judgment of the court, shall be conclusive as to all prior rights and the rights of all existing claimants upon the stream or body of water embraced in the determination. (§ 28, Ch. 164, L. '19, am., 15, Ch. 64, L. '21, cons.; 31, Ch. 164, L. '19, rev.)

§ 3303. Certificate after final determination. Upon the filing of such judgment the commissioner shall issue to each person represented in such determination a certificate, signed by the commissioner and attested under his seal, setting forth the name and address of the owner of the right, the priority of date and the extent and purpose of such right, and, if such water be for irrigation purposes, a description of the legal subdivisions of land to which said water is appurtenant. He shall transmit such certificate, and the recording fee to the county recorder of the county in which such right is located, who shall record the same in a book kept for that purpose, and thereupon immediately transmit the certificate to the owner. (§ 29, Ch. 164, L. '19, am., 16, Ch. 64 L. '21, rev.)

§ 3304. Rehearing. Within six months from the date of the judgment of determination by the court, the commissioner or any party interested may apply to the court for a rehearing. If it shall appear to the court that there are good grounds for a rehearing, the court shall enter an order fixing the time for the hearing of the application, and the clerk of the court shall, at the expense of the petitioner, forthwith mail to the commissioner and to every party interested a notice of such application and of the time and place of the hearing thereof. (§ 30, Ch. 164, L. '19, rev.)

§ 3305. Estoppel; intervention by persons

not notified. Whenever proceedings hereunder are instituted for the determination of the rights to the use of any water all claimants interested therein shall appear and submit proof of their claims at the time and in the manner herein required; any claimant, not herein excused, who shall fail to appear in such proceedings and submit proof of his claim, shall be barred and estopped from subsequently asserting any right theretofore acquired upon the stream or other body of water embraced in such proceedings, and shall forfeit all rights to the use of said water theretofore claimed by him. Any person interested in the water upon whom service of notice of the pendency of the proceedings was not had, and who did not have actual knowledge or notice of the pendency of said proceedings, may, at any time within one year after the entry of the order of determination by the commissioner, file a petition with the commissioner to intervene in said proceedings. Such petition shall contain all matters required of claimants who have been served with notice of said proceedings and a statement that the intervener had not actual knowledge or notice of the pendency of said proceedings. Upon the filing of the petition the petitioner shall be allowed to intervene upon such terms as may be equitable, and thereafter has the rights of a claimant served, and like proceedings shall be had upon the claim of such petitioner. (§ 32, Ch. 164, L. '19, rev.)

§ 3306. Several determinations; reopening records. Whenever the rights to the waters of a stream or supply have been determined by more than one and the same proceeding, the commissioner may open to public inspection, in the manner herein provided for the opening and inspection of evidence, all proofs and evidence of rights to the water, and his finding in relation thereto, in the proceedings affecting such stream or supply; and any person may contest the claims or rights of another to such water; provided, such contest may not be maintained except between claimants who were not parties to the same adjudication in the original hearings. (§ 33, Ch. 164, L. '19, rev.)

§ 3307. Water districts; superintendent. The commissioner shall divide the state into

water districts with reference to drainage watersheds so as to secure the best protection to the claimants to water and the most economical supervision by the state. Districts shall not be created until a necessity therefor arises, but shall be created from time to time as the claims thereof from the streams or supply of the state shall be determined. The commissioner shall appoint one water superintendent for each district, who shall receive such compensation as the commissioner may fix, to be paid by the water users of the district. Each superintendent shall keep an account of the time spent by him and his assistants in the duties of each county, and present a verified copy thereof to the superior court of each county at the end of each month, whereupon the judge of the court shall order the same paid according to an equitable distribution of the amount among the water users. The superintendent may employ assistants, whose compensation shall be fixed and paid in like manner as the superintendent. (§ 34, Ch. 164, L. '19, am., 17, Ch. 64, L. '21, cons., 35, Ch. 164, L. '19, & rev.)

§ 3308. Duties of superintendent; injunction against. The superintendent shall divide the water of the sources of supply of his district among the several ditches and reservoirs taking water therefrom, and among the laterals and ditches according to the rights of each, shut and fasten the head gates of ditches, and regulate the controlling works of reservoirs, in time of scarcity of water, as may be necessary by reason of the rights existing from the supply of his district; he may regulate the distribution of water among the users under a partnership ditch or reservoir in accordance with existing decrees where the rights have been determined; he shall, as near as may be, divide, regulate and control the use of the water by such closing of the head gates as will prevent the waste of water, or its use in excess of the right. Any person interested may apply to the superior court of the county for an injunction against the superintendent, but such injunction shall not be issued unless it appears that the superintendent has failed to carry into effect the order of the commissioner or decrees of the court determining the

existing rights to the use of water. Whenever the superintendent regulates a head gate to a ditch or the controlling works of reservoirs, he shall attach to such head gate or controlling works a written notice, dated and signed, stating that such head gate or controlling works has been regulated by him and is wholly under his control, and such notice shall be legal notice to all parties interested in the division and distribution of the water of such ditch or reservoir. The county attorney shall appear for the superintendent in any case which may arise in the pursuance of his official duties. (§ § 36-7, Ch. 164, L. '19, cons. & rev.)

§ 3309. Head gates; measuring devices. The owner of any ditch or canal shall maintain at the point where the water is diverted, a substantial head gate, so constructed that it can be locked and kept closed by the water superintendent; and, when required by the commissioner, shall construct and maintain measuring devices at points along such ditch to assist the water superintendent in determining the amount of water to be diverted into said ditch from the stream, or taken from it by the users. The owner of a reservoir located across or upon the bed of a natural stream, shall, when required by the commissioner, construct and maintain a measuring device, approved by the commissioner, below such reservoir, a gauge graduated to feet and tenths of feet inside the reservoir, and a capacity table for same, and, if necessary, a measuring device above such reservoir on each source of supply discharging into such reservoir. When necessary for the protection of other water users, the commissioner may require flumes to be installed along the line of any ditch. If any such owner of irrigation works shall refuse or neglect to construct and maintain such head gates, flumes, or measuring devices after twenty days' notice, the commissioner may close such ditch and the same shall not be opened or any water diverted from the source of supply, under the penalties prescribed by law for the opening of head gates lawfully closed, until the requirements of the commissioner have been complied with; and if any owner of a reservoir located across the bed of a natural stream shall neglect to put in

such measuring device after twenty days' notice, the commissioner may open the sluice gate or outlet of such reservoir and the same shall not be closed, under penalties of the law for changing or interfering with head gates, until such measuring devices are installed. (§ 41, Ch. 164, L. '19, am., 18, Ch. 64, L. '21, rev.)

§ 3310. Construction of storage dam; inspection; alteration. Before the beginning of construction of a storage dam whose maximum height is to be ten feet or more, or one which will impound fifty acre feet or more of water, the owner shall present complete plans thereof to the commissioner for his approval; construction shall not commence until such approval shall be received in writing and water shall not be stored in such a reservoir until the dam as constructed shall have been accepted by the commissioner. Any person violating this section shall be guilty of a misdemeanor. The commissioner may examine and inspect any dam, ditch, canal, obstruction, diversion, or other work under construction or completed, and the commissioner shall notify in writing the parties constructing or owning such dam or other works of any addition or alteration which he considers necessary for the security of the work or the safety of the public or property, even to the extent of requiring the lowering of the water line. Any person failing to comply with the notice of the commissioner shall be guilty of a misdemeanor. (§ 42, Ch. 164, L. '19, am., 19, Ch. 64, L. '21, rev.)

§ 3311. Required capacity outlet of dams; application for inspection by land owners. The outlet of a storage dam shall be large enough to pass the flood flow of the stream on which the dam is located. Should any person, residing on or owning land in the neighborhood of irrigation works under construction or after completion, make written application to the commissioner for an inspection of such works, the commissioner may order an inspection thereof. Before doing so he may require the applicant for such inspection to make a deposit of money sufficient to pay the expenses of the inspection, and, if the application appears not to have been justified, he may cause the whole or part of such expense to be paid out of such deposit; if the application appears

to have been justified, he may require the owner of the works to pay the whole or part of the expenses of the inspection, and the same shall constitute a lien against the works, which may be enforced as a mechanic's lien. The commissioner may require the owner to make such alterations or improvements in the dam which may appear to the commissioner essential for the protection of lives and property of persons owning land below the dam. Should the owner of the dam fail to make such alterations or improvements the commissioner may prevent the further or any storage of water in the dam. (§ 43, Ch. 164, L. '19, am., 20, Ch. 64, L. '21, rev.)

§ 3312. Use of bed of stream as carrier. Whenever the owner of a reservoir desires to use the bed of a stream or other watercourse for the purpose of carrying water from the reservoir to the consumer, he shall in writing notify the water superintendent of the district in which the waters are to be used, giving the date when it is desired to discharge water from such reservoir, its volume, and the names of all persons and ditches entitled to its use. The superintendent shall then supervise the opening of such reservoir gates, and close or adjust the head gates of all ditches from the watercourse not entitled to the use of such stored water, that those, having the right, may secure the water to which they are entitled. (§ 44, Ch. 164, L. '19, rev.)

§ 3313. Disagreement of water users; appeal to superintendent; rotation. The water users from any ditch or reservoir unable to agree upon the distribution or division of water through or from said ditch or reservoir, may apply to the water superintendent of the district in which said ditch or reservoir is located, by written notice, stating such facts and requesting the superintendent to regulate such ditch or reservoir and make a just division or distribution of water therefrom to the parties entitled to the use thereof. The superior court may also direct the water superintendent of the district to take charge of and enforce any decree to water rights pending a determination of all the water rights of the watershed. Water users owning land with attached water

rights may rotate in the use of the supply to which they may be entitled, and whenever two or more water users shall notify the superintendent that they desire to use the water by rotation, and shall present a written agreement as to the manner of such rotation, the superintendent shall distribute the water in accordance with such agreement. (§ § 45-6, Ch. 164, L. '19, cons. & rev.)

§ 3314. Water to remain appurtenant to land; transfer of right where not practicable to continue use. Water used for irrigation purposes shall remain a right appurtenant to the land upon which it is used; if, however, at any time for any natural cause beyond control of the owner it becomes impracticable to beneficially or economically use the water for irrigation of the land to which it is appurtenant, the right may, with the approval of the commissioner, be severed from the land, and simultaneously transferred and become appurtenant to other land without losing priority theretofore established, if such change can be made without detriment to existing rights. Before the approval of such transfer an inspection shall be made by the commissioner and he shall approve or disapprove such transfer and prescribe the conditions therefore. (§ 48, Ch. 164, L. '19, am., 21, Ch. 64, L. '21, rev.)

§ 3315. Violations defined; water superintendent may arrest. Any person who shall: Wilfully and without authority open, close, change or interfere with any lawfully established head gate, measuring device, or water box; or, wilfully use water or conduct into or through his ditch water which has been lawfully denied him by the water superintendent or other competent authority; or, without authority use the water to which another is entitled; or, without authority divert water from a stream; or, wilfully waste water to the detriment of another; or, divert a stream to the injury or threatened injury of the lands of another; or, use, store, or divert water without or before the issuance of the permit to appropriate such waters; or, when an appropriator of water has the lawful right-of-way for the storage, diversion or carriage of water, place or maintain any obstruction interfering with the use

of the works, or prevent convenient access thereto, is guilty of a misdemeanor. The possession or use of water when the same shall have been lawfully denied by the water superintendent or other competent authority is prima facie evidence of the guilt of the person using it. The water superintendent, or his assistants within his district, may arrest any person violating this section and deliver him to the sheriff or other police officer within the county, and upon delivery to the sheriff or officer shall immediately make complaint before the proper justice of the peace against the person so arrested. (§ § 39-40, 49-50, Ch. 164, L. '19, cons. & rev.)

§ 3316. **Fees.** The following fees shall be collected in advance by the commissioner: For examining an application for permit to appropriate water, three dollars; for filing and recording permit to appropriate water for irrigation purposes, twelve cents per acre for each acre to be irrigated up to and including one hundred acres, and ten cents per acre for each acre in excess of one hundred acres; if the application is for power purposes, twenty-five cents for each theoretical horsepower to be developed up to and including one hundred, ten cents for each horsepower in excess of one hundred and up to and including one thousand, and five cents for each horsepower in excess of one thousand; if the application is for any other purpose, five dollars for filing and recording each permit; for filing or recording any other water right instrument, one dollar for the first hundred words and ten cents for each additional hundred words or fraction thereof; for making copy of any document recorded or filed in his office, ten cents for each hundred words or fraction thereof; but where the amount exceeds five dollars, then only the actual cost in excess of that amount; for certifying copies, documents, records, or maps, one dollar for each certificate; for blue print copy of any map or drawing, ten cents per square foot or fraction thereof; for such other work as may be required of his office, actual cost of the work. At the time of the submission of proof of appropriation, or the taking of testimony for the determination of rights to water,

he shall collect from each claimant two dollars for recording the water right certificate in the office of the county recorder, together with an additional fee of twelve cents for each acre of irrigated lands up to and including one hundred acres, and ten cents per acre for each acre in excess of one hundred acres; also twenty-five cents for each theoretical horsepower up to and including one hundred horsepower, and fifteen cents for each horsepower in excess of one hundred up to and including one thousand horsepower, and five cents for each horsepower in excess of one thousand horsepower up to and including two thousand horsepower, and two cents for each horsepower in excess of two thousand horsepower as set forth in such proof, the minimum fee, however, for any claimant in such cases to be two dollars and fifty cents; also a fee of five dollars for any other character of claim to water. The two dollars recording fee shall be transmitted by the commissioner to the county recorder with the certificate when issued. (§ § 51, 21, Ch. 164, L. 19, am., 22, 10, Ch. 64, L. '21, cons. & rev.)

§ 3317. Vested rights not affected. Nothing herein contained shall impair vested rights to the use of water, affect relative priorities to the use of water determined by decree of the court, nor impair the right to acquire property by the exercise of the right of eminent domain whenever conferred by law; nor shall the right to take and use water be impaired or affected by the provisions hereof where appropriations have been initiated under and in compliance with previous laws then existing, and such appropriators have, in good faith and in compliance with the laws then existing, commenced the construction of works for the application of the water so appropriated to a beneficial use and prosecuted such work diligently and continuously, but such rights shall be adjudicated as herein provided. (§ § 56, 58, Ch. 164, L. '19, rev.)

§ 3318. Biennial report. The commissioner shall render to the governor biennially, and oftener if required, a full and true report of his work. The report shall be delivered to the governor on or before the thirty-first day of December of the year preceding the regular

session of the legislature, and shall include therein such suggestions of amendments of existing laws or for new laws as the commissioner may deem necessary. (§ 59, Ch. 164, L. '19, am., 24, Ch. 64, L. '21, rev.)

§ 3319. Right to construct ditches and canals; eminent domain. The owner of arable and irrigable lands may construct public or private canals for the carrying of water, and, whenever the same necessarily run through the lands of another, the right-of-way therefor through such land may be acquired by condemnation, under the laws of eminent domain. (§ § 4176-7, R. S. '01; 5346-7, R. S. '13, cons. & rev.)

§ 3320. Preference in case of scarcity. During years when a scarcity of water exists, owners of lands shall have precedence of the water for irrigation according to the dates of their appropriation or their occupation of the lands, either by themselves or their grantors. The oldest titles shall have precedence. (§ 4191, R. S. '01; 5358, R. S. '13, rev.)

§ 3321. Canal owner not to contract in excess of carrying capacity. Any person owning or controlling any canal, flume, or other means for carrying water from a stream or supply to lands for the irrigation of such lands, shall not contract to carry more water than such canal, flume or other means may be estimated to carry at any one time, whether such contract be made for measured time or acreage quantity. Such person shall keep the canal, flume or other means in good repair and condition so as to carry the full amount of water contracted to be carried or delivered. (§ § 4171-2, R. S. '01; 5339-40, R. S. '13, cons. & rev.)

§ 3322. Water users may clean canals and make repairs. When any person owning or controlling any canal, flume or other means for carrying water, shall permit the same, or the dam head gates or other appliances for securing the water at the head, to get out of repair or reduced in capacity so that the same will not carry the amount of water contracted to be delivered to the users thereof, and shall not within a reasonable time repair, cleanse or restore the same, then the users may, after six days' notice in writing to the owner or person

in control, enter in and upon said canal, flume or other means, and make repairs, clean or restore the same. The cost of such repairs, cleansing or restoration shall be a lien on such canal, flume or other carrying means, enforceable as other liens upon real property. Within thirty days after the completion of the repairs, cleansing or restoration, a verified notice of the lien claimed, stating the expenditures actually made, itemizing the sums expended and the purpose for which each was expended, and stating the facts upon which the lien is claimed, shall be filed in the office of the recorder of the county in which such work was done, and recorded in a book kept by him for that purpose. (§ 4179, R. S. '01; 5341, R. S. '13, rev.)

§ 3323. **Natural waterways.** Through the waters which naturally flow in the natural channels of streams have been previously appropriated and put to beneficial use by others, such channels may be used to carry water, without, however, diminishing the quantity of water which naturally flows therein, the use of which has been appropriated. Where the parties interested cannot agree upon the division of the water turned into the natural channel from the water naturally flowing therein, or if it be difficult to ascertain the amount to which each party is entitled, then the water superintendent of the district shall make such division. (§ § 4202-3, R. S. '01; 5342-3, R. S. '13, cons. & rev.)